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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Implementation of the Cable Television
Consumer Protection and Competition
Act of 1992

Broadcast Signal Carriage Issues

MM Docket No. 92-259

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

OPPOSITION OF THE NETWORK
AFFILIATED STATIONS ALLIANCE

The Network Affiliated Stations Alliance ("NASA")

hereby opposes the petition for reconsideration filed in this
docket May 3, 1993, by Cablevision Systems Corp.

("Cablevision").^{1/}

Cablevision seeks reconsideration of the
Commission's decision not to remove the protection of the
network nonduplication rules from those stations electing
retransmission consent. In the Matter of Implementation of
the Cable Television Protection and Competition Act of 1992,
MM Docket No. 92-259 (released March 29, 1993 at
¶ 180) ("Report and Order"). Cablevision concedes that the
Commission's decision is well grounded in the legislative
history of the 1992 Cable Act, Cablevision Petition at 2, but
argues that the decision is nonetheless "inconsistent" with
the "purposes" of the Act and the network nonduplication

^{1/} NASA is an informal alliance of the ABC, CBS and NBC
Television Network Affiliate Associations and represents over
600 network affiliates.

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rules. Cablevision's argument is procedurally and substantively frivolous.

It is procedurally defective because it does nothing more than repeat arguments that have already been thoroughly ventilated, considered and rejected. This issue was fully argued in comments filed in this proceeding by NCTA, Viacom and others and rebutted in reply comments filed by NASA, NAB and others. See, e.g., Reply Comments of NASA at 6-8 (January 19, 1993). The Petition raises no new arguments and presents no changed circumstances that would justify a departure from the initial determination. Reconsideration under these circumstances would be arbitrary and capricious.

In any event, Cablevision's repetitive gloss has not enhanced cable's case. Cablevision's argument rests, as did those of its predecessors, on the notion that the preservation of the network nonduplication rules is inconsistent with the 1992 Cable Act because it gives broadcast stations an "unfair" degree of bargaining power. But the only statutory language or purpose Cablevision can cite to for this equitable principle is the statute's purpose of providing consumers with the widest diversity of programming. Cablevision Petition at 5. Because Congress intended to promote diversity of programming, Cablevision reasons, Congress could not have intended to create a situation where subscribers to one or more cable systems might be denied access over their cable systems to the programming a broadcast network.

The argument proves far too much. For, as Cablevision is intensely aware, the ability to deny access to station signals is inherent in the very concept of retransmission consent, a concept which is a central feature of the 1992 Act. Congress made the determination that only by providing stations with the right to control distribution of their signals, and the concomitant right to be compensated appropriately for the retransmission of those signals, could the long-term survival of the local over-the-air broadcast system be assured. The network nonduplication rules serve precisely the same purpose and there is nothing in their continued application that is inconsistent with the 1992 Act.

Cablevision's invocation of the "problems" it might face in southern Connecticut, where parts of the state fall within the nonduplication protection zone of several New York stations, is certainly noteworthy. Cablevision Petition at 3-4. It is worth noting primarily because of thechutzpah it took for Cablevision to plead for the continued access of its subscribers to the very same Connecticut broadcast stations that Cablevision not three months ago attempted to drop from its Connecticut systems. See Report and Order at n. 118. Cablevision acceded to continued carriage of the Connecticut stations only after threats of severe retribution by both local government officials and its viewers. It is the height of hypocrisy for Cablevision to then parade those expressions

the proposition that Cablevision should be given a greater degree of "bargaining power" with respect to its local station carriage determinations.

Suffice it to say that there is no reason to think that maintaining nonduplication protection for affiliates and their networks presents a substantial threat to diversity or access to network programming. Unlike Cablevision, which has powerful economic incentives to drop or disadvantage local stations, both the stations themselves and their networks depend fundamentally on universal penetration and can be counted on to weigh that factor heavily in their nonduplication decisions and retransmission consent negotiations.

The cable industry's arguments for partial repeal of the network nonduplication rules have not improved with repetition; Cablevision's Petition should be denied.

Respectfully submitted,

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ALLIANCE

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